

THE SUNSET LIMITED CASE

THE UNITED STATES OF AMERICA
vs.
SOUTHERN PACIFIC TRANSPORTATION CO.

C.A. 79-3394

National Railroad Passenger Corporation
Operations Department
August 28, 1996

Introduction

In 1979 and early 1980, Amtrak and Southern Pacific went to war over the performance of the Sunset Limited. This was an unprecedented case brought by the Justice Department (DOJ) in United States of America vs. Southern Pacific Transportation Co.

The question of whether the bad performance was a move by Southern Pacific to eliminate the Sunset Limited has never been answered. Nevertheless, it is clear that the demise of the Sunset Limited would have terminated intercity rail passenger service across the southern United States. This was likely to happen unless the service could be dramatically improved.

This paper addresses my personal experiences and recollections as leader of the Amtrak task force that gathered the evidence in the case and my experiences as the operating expert for DOJ at the hearing in February 1980. It does not necessarily reflect the position of Amtrak or the Department of Justice.

In this paper we have endeavored to accurately and objectively reflect the circumstances surrounding this case. The readers are also encouraged to review the paper from the opposing Southern Pacific perspective before reaching their own conclusion as to the story behind the Sunset Limited case.

James L. Larson
Washington, DC
August 28, 1996

I. The Problem

In 1971 Southern Pacific (SP) contracted with Amtrak for the operation of intercity passenger train service over SP rail lines pursuant to the Rail Passenger Service Act ("the Act").

The Act provided statutory preference for the passenger trains "except in emergency, intercity passenger trains operated by or on behalf of (Amtrak) shall be accorded preference over freight trains in the use of any given line of track, junction, or crossing, unless the Secretary (of Transportation) has issued an order to the contrary" ¹ As stated in the complaint, the secretary has never been petitioned to issue such an order and has never issued such an order.

Southern Pacific owns and maintains the rail lines used by Amtrak trains operating over the SP. In addition, SP controls the operation of Amtrak trains over their rail lines including the train dispatching. SP also has a contractual obligation to make every reasonable effort to maintain schedules of the passenger trains; however, the contract was not at issue in this case.

Performance of the Sunset Limited on the Southern Pacific was never outstanding with an average of only 53.1% on time for the five calendar years, 1974 to 1978. The following year, 1979, started the same way averaging 50.4% for four months, January through April. Then the bottom dropped out of the performance,

plummeting to 7.7% for the next two months and zero for the next four. From July through October, not one train was on time. November had one on-time train; December had two. We are not talking about minutes late during this period — we are talking about hours late. The average monthly on-time performance for the eight month period from May to December, 1979 was 3.4%, less than one on-time train per month.

Not only was the performance bad, as you can't get worse than zero percent on time, but magnitude of the delays grew progressively worse, as shown in the following table²:

¹ 45 USC Section 562(e) (l) now codified at 49 USC 24308(c).

² Exhibit A to affidavit of Carl M. Sloan 19 December 1979.

Train 2 - El Paso to New Orleans

	Average Late	Average Late	Average Delay
<u>Month</u>	<u>out El Paso</u>	<u>into New Orleans</u>	<u>Houston-New Orleans</u>
Aug. 1978	58"	2'00"	30"
June 1979	1'00"	2'32"	23"
July 1979	1'25"	2'42"	2'11"
Aug. 1979	1'34"	3'48"	3'50"
Sept. 1979	57"	3'04"	3'56"

Train 1 - New Orleans to El Paso

	Average Late	Average Late	Average Delay
<u>Month</u>	<u>out New Orleans</u>	<u>into El Paso</u>	<u>New Orleans-Houston</u>
Aug. 1978	08"	1'14"	1'17"
June 1979	37"	2'52"	2'17"
July 1979	15"	3'42"	2'58"
Aug. 1979	23"	5'43"	4'41"
Sept. 1979	23"	5'40"	4'19"

Performance grew progressively worse. Between December 2 and December 14, both Trains 1 and 2 combined averaged over 7 hours late at their endpoints.³

³ Affidavit of Robert C. VanderClute, Jr. 19 December 1979.

On-time performance is a critical element in customer satisfaction and the performance of the Sunset Limited was the worst of any train in the United States. The performance was so bad it was rapidly leading toward the premature death of intercity rail passenger service across the southern United States. No passenger service could survive with such poor performance.

Was this an overt plan by the Southern Pacific to get rid of the Sunset Limited? The answer to that question may never be known for sure. I have my own opinion, which I will share later in this paper.

On September 6, 1979, Alan Boyd, President and Chief Executive Officer of Amtrak, called me into his office at Washington and asked my opinion of what the problems were on the Sunset Limited. I advised him that freight train interference appeared to be out of control; we were not sure about the current slow order situation; and the problems appeared to be east of El Paso. He directed me to do a fact finding trip as soon as possible, and to assemble a task force if necessary to zero in on the problem.

On October 1 and 2, 1979, my very competent aide, Alden Clark, Director of Contract Operations, and I made our inspection trip on Train 1 between New Orleans and El Paso. We were appalled. Although the schedules on these trains had about three hours recovery time between Los Angeles and New Orleans, much of that time was eroded by slow orders and a less than reliable signal system. Recovery time is

time added to schedules in addition to required running time and station dwell time to compensate for delays encountered en route. Therefore, essentially all of the delay encountered en route caused the trains to become later and later. Freight train interference was flagrant, extending to yard engines and local freights. Conditions were much worse than we expected.⁴

I reported back our findings and moved forward in assembling the task force of experienced operating people to address the Sunset Limited problems. The task force assembled was an awesome team. It consisted of the following:

Alden Clark, originally from the New York Central, with 25 years experience in civil engineering and transportation

Carl Sloan, originally from the Pennsylvania Railroad, with 22 years experience in mechanical and transportation

Bob Mitchell, originally from the Erie Railroad, with 38 years experience as a locomotive engineer and road foreman

Gordon DuBois, originally from the Chicago & North Western, with 34 years experience in civil engineering

Marvin Sheaffer, originally from the Chicago & North Western, with over 36 years experience as a train dispatcher, chief train dispatcher and system rules examiner.

I was the sixth member of the team, also from the Chicago & North Western with 27 years in transportation management, which included experience as a train dispatcher and system rules examiner.

Thus armed with over 180 years of experience, the six of us headed toward the Sunset Limited.

⁴ Larson-Herman memo of October 8, 1979. See Appendix II.

II. The Study

We advised the Southern Pacific of what we intended to do and a list of the trains we intended to ride. The response was generally indifference; however, they did assign SP management employees to ride with us and look over our shoulders at what we were recording. Harry Marsh, a Trainmaster with about 30 years operating experience, was assigned to ride with me on most trips and we became good friends over the extended period of time. Actually, there was great camaraderie between the SP train and engine crews, the SP management employees, and the Amtrak task force members. Operating as an expanded crew, on a first name basis, we were all observing the same miserable operation, and we certainly spent a lot of hours together. The SP riders were there allegedly to "prevent our interfering with the engineer" but were actually there to watch us. It was good having them; we shared our delay data, they saw the same appalling delays we saw and we actually considered having them as backup witnesses on the freight train interference issues. On many occasions, Harry and the others confided in us that they were ashamed at the performance, appalled at the delays, and outraged at the dispatching.

The train and engine crews were equally appalled as they were senior enough to recall when the Sunset Limited was accorded absolute priority over all other trains. They, more than anyone else, actually experienced the deterioration in service. As conductor Poole related, in former times to delay the Sunset Limited meant you went up the "winding stairs" to the superintendent's office to explain the delay. He indicated this was not a pleasant experience.

As the team members, with their SP partners, covered the Sunset Limited the delays began to roll in. We were not talking about incidental delays or unavoidable delays. We were talking about delays where a conscious decision was made to accord preference to the freight trains over the passenger trains even when other alternatives were available. These occurrences were soon named "atrocities" and the quantity was great.

The causes of the delays were many, but fell into a number of general categories as follows:

Freight trains given preference over passenger trains to meeting points.

Freight trains standing on the main track, with or without crews.

Freight trains stopping to perform local work while passenger trains waited.

Freight trains authorized to run ahead of passenger trains.

Local freights given authority over passenger trains.

Local freights switching while passenger trains sat.

Yard engines switching on the main tracks while passenger trains sat.

Light engines (without cars) preferenced over passenger trains.

The ultimate insult occurred on January 7, 1980, when a local freight was given right over Train 1 to Live Oak Spur. The local arrived; the crew put their train away and went home. The restriction to Train 1 was never annulled and when Train 1 arrived at Live Oak and could not proceed, the fireman said, "I used to work that job and we tied

up behind that building." He got off the engine and disappeared into the darkness, while the riders and the engineer impatiently awaited his return and the train became later. Several minutes later, he appeared and announced he had found Engine 7817 and Train 1 was able to proceed. Dispatcher error? Not really. It was a classic example of the indifference toward the passenger trains that existed at that time. On this particular trip Train 1 took 1 hour and 2 minutes to go 7 miles.

As our reports flowed back to corporate headquarters and no action was taken by SP to mitigate the delay, a decision was made to submit the case to the Justice Department for prosecution. One of the tasks was to convince Amtrak's General Counsel Paul Mickey and the Justice Department Counsel John Broadley that there was cause for action. Both Paul and John wanted to ride over the line in the locomotive to observe the operation for themselves before recommending to their superiors that legal action was in order.

On October 15, 1979, I took Paul Mickey as my "assistant" in the locomotive cab of Train 1 from New Orleans to Houston. It was a bad trip. The next morning I met John Broadley at Houston for the eastward trip. We discussed the operation at a leisurely breakfast, as Train 2 was hours late. It was a wretched trip. We saw freight train interference at its worst, also yard engines, local freights, parked freights, and went through sidings. Coming into Avondale Yard at New Orleans, after midnight, in the fog, we were feeling wretched with nothing to eat since the previous morning. The

yardmaster advised our engine crew to watch out for a caboose on the main track. We crept through the fog and then suddenly stopped as a caboose loomed out of the fog.

Without prompting our locomotive engineer, Bob Domaine, an excellent engineer with some 40 years of service, pounded the control stand with his fist and shouted "By God, this is intolerable. The only reason SP treats this train like this is they are trying to get rid of it. Someone has got to do something about this!" I leaned over to John Broadley, Counsel for the Justice Department, and said quietly, "I rest my case." The die had been cast.

III. Preparing for the Hearing

In preparing for the hearing, we faced the task of reviewing all of the "atrocities" looking for our best cases, not only in the magnitude of delay, but also representative of the types of delays we were encountering. The next step was to send members to the dispatcher's office to look at the train dispatching records to make sure there were no extenuating circumstances that would have influenced the decision to give preference to the freight trains. What we found in the dispatching office was a real revelation. If we thought the Sunset Limited performance was bad, so was the freight train operation. Freight train crews would be on duty for hours before leaving the yards and before they could get over the road, they would expire under the hours of service law and would set out their trains at sidings along the road. When tomorrow dawned, there were two-day old trains and yesterday's trains on the road and today's trains coming out. We found

instances of a crew departing with today's freight train, stopping at some point along the line and setting the train out and picking up yesterday's train. Sometimes they made it to their terminal and sometimes they did not because of the hours of service law. We also found instances of where a train, two days old, was given a new identifying symbol and date and therefore became a "new" train.

No wonder the operation was bad. It was our opinion that the SP's Houston regional office was not being completely honest with their San Francisco headquarters. It was interesting that gross tonnage over this line had not increased but performance had dramatically deteriorated.

The day before the federal court hearing on December 20, I received a call from San Francisco with a request to "call off the dogs." I responded that we could have when the riding program started but SP treated the Sunset Limited with complete indifference and now it was too late, as it was in the hands of the Justice Department. I also added that our evaluation of the dispatching records indicated they needed to take a critical look at their own freight operations in that territory. The Sunset Limited was only the tip of the iceberg.

At the December 20 hearing in Federal Court, SP took a strong position, citing their innocence and maintaining their policy was to give preference to the Sunset Limited. They cited severe congestion problems. We knew the congestion claim had little or no merit because there had been no increase in tonnage over the line.

Increases in trains appeared to be the result of counting yesterday's, today's and tomorrow's trains, many of which were on the road at the same time. I advised Amtrak's counsel that SP was indifferent to the problem and; notwithstanding the Consent Order signed by SP and filed in Federal Court on December 21, I believed the atrocities would go on, or get worse after the hearing⁵. SP really did not believe there was a problem. I recommended that the task force continue riding. This was done, and as predicted, the atrocities continued. Performance on the Sunset Limited in January was only 15.4%. The next hearing was scheduled for February 4 to February 8, 1980

As so often happens with any operation that is not well disciplined or where bad practices are permitted to exist, accidents occur. at 9:35 PM on December 19, 1979, Train 1, the westward Sunset Limited, operating in a rainstorm in the dark, collided with a freight train SOHOY of December 17, which was without a crew, standing on the main track in the dark between Bobsher and Connell, Texas. Approximately 50 passengers and 17 employees were injured. The SP engineer operating Train 1 was dismissed because the mere fact that the accident occurred indicated he was not operating at restricted speed as required by signal indication. Other factors may have contributed to the incident. The freight train had been standing at that point, without a crew, in inclement weather and the crew on Train 1 was apparently not advised that the main track was obstructed. Also, the conductor on the freight train claimed that he had been ordered to depart from the terminal without an operative red light on the rear of the caboose of SOHOY. An even more fundamental question is what did Southern Pacific

⁵ See Consent Order of December 21, 1979, Appendix VII.

intend to do with Train 1 in view of the main track being blocked. This incident was another example of the indifference that existed toward the operation of the passenger trains.

IV. Preparing for the February Hearing

During the month of January, the riding program continued, atrocities were handed to us on a silver platter but the focus shifted to preparing for the court hearing commencing February 4. Amtrak's General Counsel, Paul Mickey, told me that I needed to find long time SP employees who would be willing to testify about the deterioration in service. I advised him that wouldn't work; it was impossible. It would be regarded by the railroad as heresy, and I thought the penalty for heresy was death. He said I had to try, so I headed for Houston.

In 1979 the Amtrak trains were still operated with Southern Pacific train and engine crews. Initially, in 1971, all services for Amtrak were provided by railroad personnel. In the mid-1970s, a concerted effort was made to assume station, on-board service, and mechanical personnel. Train and engine crews were not assumed by Amtrak until the mid-1980s.

On my first morning in Houston, Train 2 was hours late, and I observed the SP conductor waiting for the train. He had the distinguished look of a long-service, grandfatherly appearing conductor with silver hair. I introduced myself and that is how I

met D. J. Provost from Lafayette. He agreed that the operation of the Sunset was an outrage, adding that such an operation would not be tolerated in the pre-Amtrak days when SP operated the train. He also mentioned that he had been president of the union local for 18 years, had recently sold his father's farm for a substantial amount and was on the verge of retiring. I thought, here's my man, great appearance, radiating integrity, outraged at the performance and essentially heresy proof. Somewhat reserved, I asked him if he would consider testifying at a hearing in Washington over the deterioration in the performance of the Sunset Limited. Without hesitation he replied, "Why, I would be honored." I asked him if he knew anyone else who would be interested and he responded "how many witnesses do you want 5, 10, 12?" I returned to Washington to advise counsel that contrary to my prediction we had as many SP witnesses as we wanted. Out of many candidates, three were selected to testify. In addition to Mr. Provost was R. T. Poole, a conductor, and Rolin A. Guidry, also a conductor, and father of the New York Yankee's star pitcher, Ron Guidry.

As we prepared the case for the February hearing, it was imperative that counsel have the opportunity to see first hand what we were observing. Southern Pacific refused to allow a fifth person in the locomotive cab saying it was too crowded. The cab on Amtrak's SDP-40 locomotives was the size of a small ballroom. We suggested dropping the SP management rider for a couple of trips, SP refused. SP introduced photos to the Court showing five husky employees squeezed into the cab of an SDP-40. It looked congested; however, the Court was told this was not a fair representation. On January 15, 1980, the parties returned to federal court in Washington, DC. The

Court was invited to Washington Union Station to see an SDP-40 cab. The Court readily accepted and indicated the hearing would resume at Union Station after lunch. The Court arrived with his bailiff and two court reporters. Counsels for SP arrived with another SP representative. Amtrak and Justice Department attorneys arrived and everyone boarded the SDP-40. We placed the Judge in the engineer's seat and I pointed out the various controls. About 4 conversations were going on simultaneously in the SDP-40 cab and I pointed out to the Court that we had 11 people in the cab. The Judge issued an order permitting the fifth person.

It is ironic that once SP knew what we were doing with the riding program, the performance did not improve and the "avoidable" delays continued as they did before the program. Keep in mind that the dispatching was being done locally under the direction of senior management in Houston. Many delays continued to occur, which could have been avoided by an edict to the effect of not deliberately delaying the passenger trains. The continuation of the delays amazed both the SP and the Amtrak riders because we all expected a concerted effort to minimize delays once they were aware of the riding program. Even after the first hearing in Federal Court on December 20, 1979, and the Consent Order which was filed in Federal Court on December 21, conditions did not improve. We were very careful in every case to determine if there were any extenuating circumstances that could have been considered "unavoidable." We did this by reviewing both yard and dispatching records. If there was the slightest chance of extenuating circumstances, we threw out that particular incident and it did not receive further consideration. The number of

"avoidable" cases, where the delay was obviously a conscious decision to preference the freight train when other alternatives existed or to continue switching on the main track with yard engines or local freights, continued to mount. While at this time I do not have the specific count, I believe the number of recorded "atrocities" was around 80 incidents. From this we selected about 50 incidents which were included in the affidavits of the train riders. In preparation for the February 1980 hearing, we carefully selected about 11 incidents which were most representative.

V. The Hearing

The hearing commenced on Monday, February 4. The first witness for the United States was Alan Boyd, Amtrak's President and Chief Executive Officer. In his direct testimony he outlined the negative impact of such poor performance and why improvement was critical to the future of the Sunset Limited. However, it was under cross-examination that he most effectively summarized the position of Amtrak vis-à-vis the railroad industry. Counsel for SP asked Mr. Boyd about an allusion to David and Goliath to which Mr. Boyd replied:⁶

"Absolutely, yes. I said, we want to work with you in the industry in the most desperate way, and I am terribly concerned about the negative attitudes which I have seen in this industry which manifest themselves on a number of railroads -- not generalizing. Some railroads provide a superior performance for Amtrak.

But I said that the last thing in the world I wanted to do was to get into combat with the freight railroad industry, but I think if I can remember exactly what I said, I don't want to get into a David-and-Goliath situation, but I want to assure you that we are picking up and polishing our stones if that is the way it has to be.

⁶ Testimony of A. S. Boyd, USA vs. SPTC, Transcript of Hearings, Vol. 1, February 4, 1980, at 37 and 38.

And I make that point to you and to them that Amtrak is in business to stay and we are going to provide good service and I want to do it with the support of the railroads, but we'll do it."

The remainder of that day and the next day I testified on the various examples of freight train interference which we discussed utilizing diagrams and a chalkboard. Each of the 11 cases was covered in minute detail.

The first SP witness went through each case and refuted the avoidable delay concept citing congestion, lack of yard tracks and claiming that in all but two cases, where the dispatchers erred, the delays were unavoidable. The SP witness also emphasized that SP policy was to expedite passenger trains.

The official position of the SP is summed up in the following excerpts from one of the SP witnesses⁷.

Q Let's turn to the passenger business for a minute. Just to get to a basic issue that keeps cropping up in this record, . . . if Amtrak were to attempt or determine or decide to revise its system so as to drop Trains 1 and 2 what would the Southern Pacific's reaction to that move be?

⁷ US vs. Southern Pacific Transcript of Hearings Vol. 2, February 7, 1980 at 71 et seq.

A We would be happy.

Q That really is true with respect to all of the passenger operations you run for Amtrak; is it not?

A That is correct.

Q Why would you be happy if those operations were terminated?

A Because we lose money on them. . .

Q What is the attitude of the Southern Pacific with respect to the passenger business as long as they are required by law to conduct it, as long as Amtrak in other words wants these trains run?

A As long as we are required by law to operate the Amtrak trains we will give them the highest priority. My definition of the highest priority is that we will try the hardest to operate those trains on time. . .

Q Now, how do you describe the record of performance as far as Trains 1 and 2 on the Lafayette Division in the last half of 1979?

A Unsatisfactory

Q Has that been of concern to the top management of the company

A Yes, sir.

Q Has that, based on the analysis that you have made, has that record, that unsatisfactory record been produced by a decision not to give preference to passenger trains over freight trains?

A No, sir.

Manna from Heaven arrived on Wednesday morning, February 6, just after the SP witnesses had strongly emphasized that Amtrak's passenger trains were preferenced over freight trains. I went to the office early and picked up the morning report which covered Amtrak operations for the previous 24 hours. I noted that the previous evening Train 2, the Sunset Limited, had derailed on the scale track, a freight yard track, at Morgan City while backing in the clear for two westward freight trains.

The hearing started with preliminaries on February 1, consumed the period February 4 to February 8 with closing arguments on February 27. The hearing ended with the Court advising we would receive his decision; however, that decision was never rendered. In the meantime, the train was operating under a consent order in which SP agreed that the train would receive proper handling consistent with the Rail Passenger Service Act.

VI. Post Hearing

Ask any SP manager who was present in 1979 or 1980 about World War III and they will acknowledge their understanding that the Sunset Limited case was named WW III by SP managers. The SP can better tell the story of their internal management changes. What was important to Amtrak was the change in performance once the problem was acknowledged by SP and once the consent order was honored.

Notwithstanding the rigors of the hearing and the consent order, performance did not improve overnight or for the next five months. Avoidable freight train interference continued although not with the frequency or magnitude of former times. During this period Amtrak and the DOJ seriously considered going back to Federal Court to assert Amtrak's rights under the Rail Passenger Service Act.⁸

On-time performance during the transition period jumped from 15.4% in January 1980 to 65.4% in February 1980 followed by a lackluster average of 21.5% for the next five months and 70.3% for the last five months of 1980. What happened to performance for the next four years?

⁸ See Mickey-Jochner letter of May 1, 1980, Appendix X.

1981 was 86.8%

1982 was 87.1%

1983 was 90.4%

1984 was 86.6%

Under direct examination I was asked "Based upon your investigation, Mr. Larson, in your opinion is the interference which the Sunset Limited experience on the Lafayette Division the result of merely poor dispatching or is it the result of a conscious choice being made to preference the freight over passengers?" I replied, "In my opinion, it is a result of a conscious choice to preference freight trains over the passenger trains."⁹

What about the uncertainty of no hearing decision? On February 13, 1980, the Federal Judge issued an order extending the consent order of December 21, 1979, until his ruling on the motion for a preliminary injunction. That ruling was never issued. Looking at the performance record, it is apparent the consent order ultimately fulfilled its purpose, and then some. The Consent Order remained in effect until February 7, 1984, when a stipulation was approved dismissing the case. The second benefit was the impact of the case upon the rest of the industry. Other carriers improved their performance because they did not want to be next to go before a Federal Judge on this issue.

In conclusion, Alan Boyd's analogy of David and Goliath was right on target. We carefully selected and polished our smooth rocks. The impact upon the rest of the industry was significant and most important, the Sunset Limited survived.

Early in this paper, I avoided the question as to whether I thought the Sunset Limited case was an overt move by the SP to eliminate the train. As I said, I believe the true answer to that question may never be known. My own opinion is, notwithstanding a strong anti-passenger train stance in the early and mid-1970's, San Francisco did not intend to eliminate the Sunset Limited in 1979 and 1980. On the contrary, as a result of previous contract negotiations, our working relationship with SP at that time was probably the best it had ever been. Considerable credit should go to Rob Krebs who was the SP Vice President-Transportation, for turning the adversarial relationship between SP and Amtrak to an effective working relationship.

I am not the person to ask to defend the Southern Pacific in this proceeding; however, I will express some of the SP reflections that we are familiar with.

SP cites severe congestion at Englewood Yard in Houston caused by a number of circumstances, including significant traffic levels and a yard in need of rehabilitation. This in itself should not have adversely affected the passenger trains; however, it would have a significant impact upon freight train operations and some fallout could impact upon the passenger operation.

Their next point was that there was a severe shortage of crews. This has some merit because as crews died under the hours of service law, they had to be deadheaded to their terminal and their trains sat, often on the main track. This situation had a tendency to become worse and worse.

A final question as to the motives of the SP Houston office may not have an answer. Clearly, things improved dramatically with time. However, it was a new management team that turned it around. The real question of whether it was an overt move by Houston to be rid of the passenger train or a demoralized management team that just gave up at some point when everything went awry, may never be answered.